

82-1133

No.

FILED

JAN 3 1982

ALEXANDER L. STEVENS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PILAR LOWENTHAL, JEAN ARTHUR
LOWENTHAL, JR. AND MARIA LORETO LOWENTHAL,
Appellants,

v.

MORTON E. ROME, SURVIVING
PERSONAL REPRESENTATIVE OF THE
ESTATE OF JEAN ARTHUR LOWENTHAL, AND
ROLF LINDNER,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS
OF MARYLAND
PETITION FOR WRIT OF CERTIORARI

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ALLEN, THIEBLOT & ALEXANDER,
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The World Trade Center,
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(301) 837-1140,
Attorney for Appellants.

QUESTIONS PRESENTED

I.

Did Maryland's recognition of a Spanish Court's annulment on religious grounds of a valid Gibraltar marriage between a Spanish national and a United States citizen violate Appellant's right to the free exercise of religion under the first Amendment to the Constitution of the United States?

II.

Did the Maryland Court of Appeal's interpretation of the term "voluntary" in Md. Code, Estates and Trusts Article 1-202(b) deprive Appellant of property rights without due process of law?

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AUTHORITIES

Plyler v. Doe, ____ U.S. ____ , 102 S.Ct. 2382 (1982)

Shaughnessy v. Mezei, 345 U.S. 206 (1953) . . .

Sherrer v. Sherrer, 334 U.S. 343 (1948) . . .

Wong Wing v. United States, 163 U.S. 228 (1896)

Maryland Code, Estates and Trusts Art.,
§1-202(b)

Maryland Constitution, Declaration of Rights,
Article 36

First Amendment, United States Constitution

Fourteenth Amendment, United States
Constitution

LOWER COURT OPINION

____ MD. ____ , 449 A.2d 411 (1982)

JURISDICTIONAL GROUNDS

This appeal is taken from a decision of the Court of Appeals of Maryland on September 3, 1982. Appellant's Petition for Reconsideration and Request for Stay of Mandate of that decision was denied October 5, 1982. Jurisdiction over this appeal is granted by 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES

1. Maryland Code, Estates and Trusts Article, Section 1-202.

- (a) Valid divorce. - No person who is validly divorced a vinculo matrimonii from the decedent or whose marriage to the decedent has been annulled is a surviving spouse.
- (b) Divorce in another State. - No person who has voluntarily appeared in a proceeding in which an a vinculo matrimonii divorce between the decedent and the survivor, or an annulment of their marriage was obtained, even though not recognized as valid in this state, is a surviving spouse. This subsection does not apply if the parties to the divorce or annulment subsequently remarry each other.
- (c) Marriage to a third party. - No person who participates in a marriage ceremony with a third person, after a decree or judgment of divorce or annulment obtained by the decedent, is a surviving spouse.
- (d) Conviction of bigamy. - No person who has been convicted of bigamy while

married to the decedent is a surviving spouse. (An. Code 1957, art. 93, Section 1-202; 1974, ch. 11, Section 2.)

2. Maryland Constitution, Declaration of Rights, Article 36.

That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain, any place of worship, or any ministry; nor shall any person otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief, provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come.

Nothing shall prohibit or require the making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school, institution, or place.

Nothing in this article shall constitute an establishment of religion. (1970, ch. 558, ratified Nov. 3, 1970.)

3. First Amendment to this Constitution of The United States:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

4. Fourteenth Amendment to the Constitution of the United States:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONCISE STATEMENT OF THE CASE

Appellant is a Spanish citizen of the Catholic faith. On August 25, 1959, she married Jean Arthur Lowenthal, an American citizen of the Jewish faith domiciled at all times in the State of Maryland. Under then-Spanish law, a Catholic was prohibited from marrying non-Catholics in a religious ceremony in Spain. Nor could a civil ceremony

be performed between a Catholic or non-Catholic unless the Catholic first renounced his or her religious faith. In order for Appellant to marry and still retain her right actively to practice her religious faith, she accompanied Jean Arthur Lowenthal to Gibraltar and was married in a civil ceremony. The civil ceremony in Gibraltar between Catholic and non-Catholic was recognized as valid both in Gibraltar and in Maryland. Appellant was not aware of any possible invalidity of her marriage under then-Spanish law.

After the separation of the parties in 1961, Jean Arthur Lowenthal initiated legal proceedings in Spain to have the marriage annulled on the grounds of its religious invalidity under then-Spanish law. Appellant appeared under compulsion of process and asserted the validity of the Gibraltar marriage at every stage of the Spanish legal proceedings. Appellant has continued to assert the validity of her marriage to Jean Arthur Lowenthal at all times.

The annulment was granted by the Spanish Court of highest resort on the grounds of its religious invalidity in Spain at that time. Amendments to the Spanish Constitution in 1978 later aligned that country's religious freedoms with our own. In Spain today, and at the time Appellant asserted her rights as a surviving spouse in the Maryland Courts, a person of any faith could participate in a civil marriage ceremony in Spain or in other countries without first being compelled to renounce (or declare) his or her religious faith.

At the time of Jean Arthur Lowenthal's death, the majority of his property was situated in Baltimore, Maryland. Probate proceedings were commenced in the Orphans' Court of Baltimore City. Appellant appeared in the probate proceedings and claimed an interest in Jean Arthur Lowenthal's estate as his surviving spouse. Appellant asserted that the Spanish annulment had no binding effect on the Maryland Courts, and that a recognition of the

Spanish annulment (1) would be a violation of her right as a non-resident alien to the free exercise of her religious beliefs under the United States and Maryland Constitutions, and (2) would contravene the strong public policy of Maryland in favor of the free exercise of individual religious beliefs. The Orphans' Court of Baltimore City declared that Appellant was bound by the Spanish annulment and could not assert her rights as the surviving spouse of Jean Arthur Lowenthal. Their decision was appealed directly to the Maryland Court of Appeals.

Appellant's right to the protection of her First Amendment right to religious freedom was raised argument and brief in the Orphans' Court of Baltimore City and in both briefs and argument and briefs before the Maryland Court of Appeals. Both Courts ignored Appellant's contentions, thus denying her Constitutional rights. The following portions of the trial transcript are pertinent (All page

references are to the transcript of proceedings in the Orphans' Court of Baltimore City):

MR. ALEXANDER (Appellant's counsel): "England has two cases on this point, and so we are using them as authority because England has had two cases involving Malta civil marriages between a Catholic and a Non-Catholic which were later annulled but then the question came up in the English courts to the validity of the annulment. The English Court said we do not recognize the annulment because that annulment is against our strong public policy, namely, our policy in favor of freedom of religion. Accordingly, those English cases are authority for what Maryland and the courts in the United States would hold, we submit." (Vol. I, 28, 29).

MR. ALEXANDER (Appellant's counsel): "We will prove under the law of Spain, if you have a civil ceremony in Spain and you are a Catholic, you must go before the magistrate, and you must

declare your faith. Now, if you wish to be married civilly, you would have to declare under oath, I am not a Catholic. Now, on the other hand, to go and engage in a civil ceremony under the religious law of Spain is not an occasion for being debarred from the Catholic faith. That is not a matter of the state law of Spain. That is a matter of the Catholic faith.

She married outside the church in a civil ceremony in Gibraltar, but that does not in and of itself debar her from practicing the Catholic faith, and she never has to go before a tribunal as she would in Spain to be married civilly and say, no, I am not a Catholic.

It might be the church would not recognize, the Catholic Church would not recognize her marriage, but that does not mean she ceases to be Catholic. That is in terms of the distinction between canonical and civil law." (Vol. II, 12-13).

MR. ALEXANDER (Appellant's counsel): "One of the principal issues in this case is the doctrine of comity. We will present to the Court authority which maintains that the marriage entered into between Jean Arthur Lowenthal and Pilar Lowenthal being valid where it was performed is valid in the United States. Furthermore, the annulment between the two being based upon a religious affinity is a grounds for annulment which is against strong public policy of both the United States and the State of Maryland as expressed in their constructions and in their statutes; that this Court under the doctrine of comity does not have to give respect to a finding of a foreign country which is opposed to our public policy." (Vol. II, 40-41).

PILAR LOWENTHAL (Examination By Mr. Alexander):

Q. "You are a citizen of Spain and have lived in Spain your entire life?"

A. "Yes."

Q. "What is your religion?"

A. "Catholic."

Q. "Were you baptized and confirmed in that religion?"

A. "Yes."

Q. "Have you practices that religion throughout your life to the present?"

A. "Yes." (Vol. II, 55)

Q. "Why did you and Jean Arthur Lowenthal go to Gibraltar to be married?"

A. "Because we were of different religion and we could not contract matrimony in Spain."

Q. "What did you think his marital status was when you entered into the proported ceremony in Zurich?"

A. "I thought that he was a single man and he called me several times from this country previous

to that ceremony asking me to marry him." (Vol. II, 63)

Q. "Why did you go to Gibraltar to marry?"

A. "Because if I did not go out of Spain to get married, I would have to resign my Catholic faith." (Vol. II, 3-4)

EXAMINATION OF PILAR LOWENTHAL BY JUDGE WILLIAMS:

JUDGE WILLIAMS: "Was she aware at the time she went through the ceremony with Mr. Lowenthal in Gibraltar her native country of Spain would not recognize that marriage as being legal?"

MR. CRUZ: "Should I ask the question again, sir, because the reply, I don't think she understood my question?"

JUDGE WILLIAMS: "Ask the question again, of course."

THE WITNESS: "I didn't know at the time."

JUDGE WILLIAMS: "When did she first learn that her marriage would not be recognized in her native country in Spain?"

THE WITNESS: "I didn't know for a time it was not going to be recognized in Spain."

JUDGE WILLIAMS: "In other words, she never knew then is that what she is saying, she never knew the marriage was invalid in Spain?"

THE WITNESS: "No, never." (Vol. II, 10-11)

EXAMINATION OF JOSE ANTONIO ROBLES RODRIGUEZ,
AN EXPERT ON SPANISH CIVIL LAW, BY MR.
ALEXANDER:

Q. "Under the then-Spanish law, could a person of the Catholic faith marry in a civil ceremony and declare themselves to be a Catholic?"

A. "No."

Q. "Was as a part of a civil ceremony in Spain a declaration

of religious faith required?" A.
"Yes."

Q. "If a person then asked by the magistrate said, I am of the Catholic faith, there then could be no civil marriage, is that correct?"

A. "No." (Vol. II 28-29)

Q. "Can today or since 1978 a person of the Catholic faith marry a person of the non-Catholic faith in a civil ceremony in Spain?"

A. "Yes."

Q. "Similarly, if such a marriage were entered into in Gibraltar or in the United States, would it be recognized in Spain."

A. "Yes." (Vol. II, 45)

Appellant's rights to the protection of the Fifth and Fourteenth Amendments to the Constitution of the United States were asserted in her Motion for Reconsideration and Request

for Stay of Mandate, filed in the Court of Appeals of Maryland on October 1, 1982. These claims were also ignored by the Court.

ARGUMENT

Appellant is a non resident alien who was validly married to a United States citizen. Her Husband owned property situated in the United States at all times during the marriage and at the time of his death. As a non-resident alien, Appellant was entitled to the protection of the United States constitution when she asserted her right as a surviving spouse to share in her American husband's estate then being probated in the Orphans' Court of Baltimore City. Plyler v. Doe, ____ U.S.____, 102 S.Ct. 2382 (1982); Shaughnessy v. Mezei, 345 U.S. 206 (1953); Wong Wing v. United States, 163 U.S. 228 (1896). Appellant's constitutional rights were ignored by the Maryland Court of Appeals. In denying to Appellant the status of a surviving spouse, Maryland gave extraterritorial effect to a Spanish annulment of a valid Gibraltar marriage

granted on a narrow religious grounds now no longer recognized as valid even in Spain. By so doing, Appellant's right to the free exercise of her religious beliefs under the first Amendment to the Constitution of the United States was completely ignored.

The Maryland Court of Appeal's interpretation of the word "voluntary" in Md. Code, Estates and Trust Art., §1-202(b) deprived Appellant, and other spouses similarly situated, of property rights without due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States. Appellant continually proclaimed the validity of her marriage in the Spanish annulment proceeding. She appeared only under the compulsion of process to protect her interests under then-Spanish law. The Maryland Court of Appeals has labelled this a "voluntary" appearance which forever binds Appellant to the results of a Spanish annulment granted on narrow religious grounds. Her right to share in her American husband's American

estate has thus been arbitrarily denied without due process of law. Sherrer v. Sherrer, 334 U.S. 343 (1948).

This interpretation of "voluntary" also jeopardizes the marital and property rights of any Maryland citizen whose spouse seeks a divorce or annulment in a foreign jurisdiction. It will effectively prevent a spouse from promptly contesting a foreign divorce or annulment out of a fear that a "voluntary" appearance (even to proclaim the continuing validity of the marriage) will subsequently bar them from taking as a "surviving spouse" under Maryland's laws of testamentary disposition. A spouse is forced to give up the right to protest an unlawful dissolution of their marriage, if they wish to retain the right to participate in testamentary disposition.

These denials of Appellant's constitutional rights present important questions of federal law which have not been, but should be, settled by this Court. The full

extent of the rights of non-resident aliens to the protection of the United States Constitution remains unclear and of continuing concern. Plyler v. Doe, ____ U.S._____, 102 S.Ct. 2382 (1982). Although Appellant is a non-resident alien, she married an American citizen who owned property in America during the marriage and at the time of his death. The arbitrary termination of her marital status by a Spanish Court on grounds offensive to the First Amendment to the Constitution of the United States is a manifest in justice. The parochial action of the Spanish Court cannot be allowed to forfeit Appellant's right to her legitimate marital status in the Courts of Maryland. Whatever effect the Spanish Court decision had on the parties property rights to Spanish property, it cannot be allowed to affect rights to American property without violating important Constitutional rights of Appellant.

Respectfully submitted.

JOHN D. ALEXANDER, JR.
Attorney for Appellant

APPENDIX A

PILAR LOWENTHAL, * IN THE
Plaintiff * COURT OF
* APPEALS
v. * OF
MORTON E. ROME, * MARYLAND
Surviving Pers. Rep. of the * NO. 174
Estate of Jean Arthur *
Lowenthal, et al *
*
Defendant
* * * * * * * * * * * * *

COUCH, JUDGE

We are here called upon to determine whether the Orphans' Court of Baltimore City erred in ordering a renunciation¹, filed by Mrs. Pilar Lowenthal in the estate of Mr. Jean Arthur Lowenthal, to be of no force and effect.

The underlying facts are, in pertinent part, uncontradicted and may be capsulized as follows. In 1959, Pilar, the appellant, and Jean, the appellee's decedent,

¹ Md. Code (1974, 1981 Cum. Supp.), Estate & Trusts Article, Sec. 3-203, gives the surviving spouse the right to take one-half of the decedent's estate if there is no surviving issue, or one-third if there is surviving issue, instead of the property left to him by will.

journeyed from their home in Malaga, Spain, to Gibraltar, where they were married by a British Magistrate. Pilar, a Spanish citizen, was of the Roman Catholic faith and Jean, an American citizen domiciled in Maryland, was a non-Catholic. At that time in Spain, Pilar, as a Catholic, could only marry another Catholic in a religious ceremony and could marry a non-Catholic in a civil ceremony only if she renounced her faith and Jean did not wish to convert to Catholicism, they married in Gibraltar under English law. After their marriage, the parties returned to Spain and their Malaga home in which they had previously resided together for a number of years. In 1961, the parties separated and the appellant left the household with the parties' two children who had been born in 1956 and 1959, prior to their Gibraltar marriage. That same year, one Anna Larseon Bernadotte and her son moved into Mr. Lowenthal's home.

In 1962, Mr. Lowenthal successfully sought in the Spanish courts an annulment of

his marriage to the appellant, which was ultimately affirmed by Spain's highest court, the Supreme Court. In 1966, Mr. Lowenthal married Ms. Bernadotte. Mr. Lowenthal died testate in 1977. Ms. Bernadotte had predeceased him in 1975. Mr. Lowenthal left an estate in Maryland which was being administered by the Orphans' Court of Baltimore City. Having been ignored in the appellee's will, the appellant filed in the Orphans' Court a renunciation of all provisions thereof and elected to take the intestate share of his estate pursuant to Maryland Code (1974, 1981 Cum. Supp.), Estates and Trusts Article, Sec. 3-203. After certain procedural sparring, not pertinent here, the Orphans' Court held a hearing and concluded that it would recognize the Spanish decree of annulment, thereby rendering appellant's renunciation of no force and effect. This appeal ensued and we granted certiorari before consideration by the Court of Special Appeals to address an issue of public importance.

Section 3-203 of the Estates and Trusts Article provides that a surviving spouse may elect to take the share which he might take in intestacy instead of the property left to him by will. Section 1-202 of the Article spells out who may not be considered a surviving spouse; it reads as follows:

"(a) Valid divorce. - No person who is validly divorced a vinculo matrimonii from the decedent or whose marriage to the decedent has been annulled is a surviving spouse.

(b) Divorce. - No person who has in a proceeding in which an a vinculo matrimonii divorce between the decedent and the survivor, or an annulment of their marriage was obtained, even though not recognized as valid in this state, is a surviving spouse. This subsection does not apply if the parties to the divorce or annulment subsequently remarry each other.

(c) Marriage to a third party.

No person who participates in a marriage ceremony with a third person, after a decree or judgment of divorce or annulment obtained by the decedent, is a surviving spouse.

(d) Conviction of bigamy. - No person who has been married to the decedent is a surviving spouse."

The appellant argues that she was validly married to Mr. Lowenthal and that the Orphans' should not have recognized the Spanish annulment decree because it was obtained on a ground not recognizable in Maryland and against the strong public policy of this State. On the other hand, the appellee contends that Mrs. Lowenthal is not a surviving spouse because, under section 1-202(a), the Spanish decree was valid in Spain and should be recognized in Maryland and because, under section 1-202(b), of her voluntary appearance in the Spanish

proceeding. The Orphans' Court, in agreeing in part with appellee's position, stated:

"We are inclined to agree her appearance was not 'voluntary' in the sense that she was not the original moving party. However, she was faced with an alternative, and to the extent she exercised her options, her appearance was voluntary. We recognize that the eventual definition of 'voluntary' as used in Section 102(b) of the Estates and Trusts Article must come from a higher court."

Thereafter, that court stated that it would not rest its decision on section 1-202(b) but on section 1-202(a). In doing so, it stated:

"It may be observed here that, although Maryland prohibits common law marriages within our state, the public policy of Maryland has long recognized a foreign common law marriage, provided, of course, it is valid where consummated."

Penultimately, the court stated:

"While Section 1-202(a) of the Estates and Trust Article does not use the same language regarding 'validity' as does Section 1-202(b), we are bound to our statute as it is written. Since Section 1-202(a) simply uses the word 'valid', it must be tested by

the standards of the jurisdiction where the decree of annulment was granted, the Republic of Spain."

Without further elucidation, the court then held that the appellant's renunciation was of no force and effect because the marriage of the parties had been dissolved by the Supreme Court of Spain in 1965. We shall affirm the order of the Orphans' Court, not, however, for the reason utilized by that court, about which we express no opinion.

In our view, section 1-202(b), set out above, governs the fact situation presented in this appeal. By section 1-202, the legislature has provided who may not be a surviving spouse. Sub-section (b) makes clear that neither party who voluntarily appears in a proceeding where, in pertinent part, an annulment of their marriage is obtained, even though not recognized as valid in this state, may be deemed a surviving spouse upon the death of the other spouse. The critical question, then, is what did the legislature mean by

"voluntarily appear" within the context of this sub-section.

Judge Cole, speaking for the Court in State v. Berry, 287 Md. 491, 495-496, 413 A.2d 557, 560 (1980), stated:

"As we have stated many times, the cardinal rule of statutory construction is to ascertain of the legislature. Board v. Stephens, 286 Md. 384, 408 A.2d 1017 (1979); Harbor Island Marina v. Calvert Co., 286 Md. 303, 407 A.2d 738 (1979); S.A.S. Personnel Consult v. Pat-Pan, 286 Md. 335, 407 A.2d 1139 (1979); Unnamed Physician v. Comm'n, 284 (285) Md. 1,400 A.2d 396 (1979). The statutory language itself provides the clearest indication of the legislative intent and is thus the primary source for all statutory construction. Board v. Stephens, *supra*; Harbor Island Marina v. Calvert Co., *supra*. We also adhere to the principle that the court should confine itself to construing the statute according to the ordinary and natural signification of the words used without resorting to subtle or forced interpretations designed to limit or extend the operation of the statute. Harbor Island Marina v. Calvert Co., *supra*; Mauzy v. Hornbeck, 285 Md. 84, 400 A.2d 1091 (1979); Massage Parlors, Inc. v. City of Balt., 284 Md. 409, 398 A.2d 52 (1979). When the words used convey a

clear and plain meaning, there is no need to look beyond the statute to ascertain the legislative intent. Collier v. Connolley, 285 Md. 123, 400 A.2d 1107 (1979); Mauzy v. Hornbeck, supra, 285 Md. at 93 (400 A.2d 1091); Massage Parlors, Inc. v. City of Balto., supra, 284 Md. 494- 95 (398 A.2d 52)."

(1) It is clear from the language of sub-section (b) that the legislature intended to disqualify as a surviving spouse any person who voluntarily appeared in a proceeding where the marriage was annulled or a divorce obtained even though not recognized as valid in Maryland. Patently, this translates into a legislative intent to bar one from being a surviving spouse even though the divorce or annulment may have been obtained for reasons which would not be recognized in Maryland.

"Voluntary" has been variously defined as "acting or done of one's own free will without valuable consideration," "acting or done without any present legal obligation...," "not accidental: intentional."

Webster's Third New International Dictionary

2564 (1976). Black's Law Dictionary 1413 (5th ed. 1979), defines "voluntary", in part, as "Done by design or intention. Proceeding from the free and unrestrained will of the person. Produced in or by an act of choice." In State v. Comes, 237 Md. 271, 277, 206 A.2d 124, (1965), the Court stated:

"The Oxford English Dictionary, Vol. 12, describes 'voluntarily' as being 'of one's own free will and accord; without compulsion, constraint or under influence by others; freely, willingly.'"

(2-4) In the instant case, we are advised that the Spanish proceeding began when Mr. Lowenthal filed an action for "declaratory judgment"² seeking to have his marriage to the appellant declared a nullity. It would appear from the record that Mrs. Lowenthal was served with some kind of process, and answered by attacking the court's jurisdiction over the subject matter and, separately, by a plea to

²This "declaratory judgment" is not to be confused with a proceeding under Code (1974, 1980 Repl. Vol.), Cts. & Jud. Proc., Art., Sec. 3-401 et seq.

the merits. We find nothing in the record to suggest that her appearance was compelled under any kind of penalty such as exposure to being held in contempt of court and subject to incarceration. We also observe that it was appellant's burden to prove that the Spanish law in this respect was, as it would appear Pilar such law would not be subject to judicial notice under Code (1974, 1980 Repl. Vol.), Courts & Judicial Proceedings Article, Sec. 10-501, absent a showing that Spain had a system of law based on the common law of England.³ Such proof being absent, we are not at liberty to assume that the appellant was compelled to appear in the proceedings brought by the appellee's decedent. It, therefore, appears that the appellant had a choice whether or not to appear. She chose to appear and, in doing so, she exercised her free will without compulsion. It seems to us that by so doing the appellant, within the context of subsection

³Section 10-501. Judicial Notice.

(b) of section 1-202, voluntarily appeared and, thus, cannot be a surviving spouse.

Accordingly, we hold, on this record, that the appellant falls within the terms of sub-section (b) of section 1-202 and, therefore, cannot be deemed a surviving spouse. We shall affirm the order of Orphans' Court.

ORDER AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

APPENDIX B

MANDATE

COURT OF APPEALS OF MARYLAND

No. 174, September Term, 1981

PILAR LOWENTHAL

v.

MORTON E. ROME, Surviving
Personal Representative of
the Estate of Jean Arthur
Lowenthal et al.

* Appeal from the
Orphans' Court
* of Baltimore
City pursuant
* to certiorari
to the Court of
* Special
Appeals.
* Filed:
* February 22,
* 1982.
* September 3,
* 1982: Order
affirmed.
* Costs to be
paid by
appellant.
* Op. by Couch
J.
* October 4,
* 1982: Motion
for reconsider-
ation and
request for
* stay of man-
date filed by
appellant.
* October 4,
* 1982: Above
motion denied.

STATEMENT OF COSTS:

In Circuit Court:

Record -
Stenographer's Costs -

In Court of Appeals:

Petition Filing Fee	\$20.00
Printing Brief for Appellant	Not supplied.
Portion of Record Extract	
- Appellant	-
Reply Brief	-
Appearance Fee - Appellant	
	10.00
Filing Fee on Appeal (Court of Special Appeals)	
	30.00
Motion for Reconsideration	10.00
Printing Brief for Appellee	\$154.00
Portion of Record Extract	
- Appellee	-
Appearance Fee - Appellee	10.00

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals this fifth day of October, 1982.

Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

APPENDIX C

IN THE MATTER OF * IN THE
THE ESTATE OF * ORPHANS'S
JEAN ARTHUR LOWENTHAL * COURT
Deceased * OF
* BALTIMORE
* CITY
* * * * *

MEMORANDUM

This matter came before the Court on a Petition for a Hearing on Renunciation in the Estate of Jean Arthur Lowenthal. The Petitioner, Maria de Pilar San Jose de los Heros, being the alleged surviving widow of the decedent, Jean Arthur Lowenthal.

The Court has considered the pleadings; the extensive testimony, the exhibits, the scholarly memoranda and arguments of counsel.

The central issue to be resolved by the Court is the marital status of the Petitioner as of the date of the death of the decedent, June 20, 1977.

The evidence is abundantly clear that the Supreme Court of Spain, the highest court in Spain, annulled the marriage between the parties in 1965. It is also abundantly clear that Petitioner participated in the annulment litigation at each and every stage of the three court hearings and was represented by counsel at each of the hearings. The litigation was commenced in what may be said to be the court of original jurisdiction by the decedent; appealed to an intermediate court of appeals, and finally, to the Supreme Court of Spain.

These facts bring into play the provisions of our Code, Estates and Trust Article, Section 1-202(b) which requires us to give effect to foreign annulments whether or not such annulments would be valid in Maryland if the party claiming the right had "voluntarily" appeared. We are inclined to agree that her appearance was not "voluntary" in the sense that she was not the original moving party. However, she was faced with an

alternative, and to the extent she exercised her options, her appearance was voluntary. We recognize that the eventual definition of "voluntary" as used in Section 102(b) of the Estates and Trusts Article must come from a higher court.

In light of what we have just stated, we are unable to rest our decision upon Section 1-202(b) and we consider this case under the provisions of Section 1-202(a) of the Estates and Trust Article. That statute reads thusly:

"No person who is validly divorced a vinculo matrimonii from the decedent or whose marriage to the decedent has been validly annulled is a surviving spouse".

That the annulment of the marriage was valid in Spain is beyond question. The three courts through which the controversy travelled had full and complete jurisdiction of the persons involved and the subject matter, annulment. As mentioned above, the highest court of Spain, the Supreme Court, made the final ruling.

Counsel for Petitioner urges that the annulment, although valid in Spain, should not be recognized by this Court because religious grounds was the basis for the decision of the Supreme Court of Spain. Counsel points out that in Maryland, our statutes do not recognize religious grounds as a basis for the annulment of a marriage. Therefore, counsel argues that for us to recognize the decree of annulment granted by Spain's highest court, would be contrary to the "public policy" of the State of Maryland. The undisputed evidence adduced before us proved that the civil courts of Spain follow the canonical law of the Roman Catholic Church when determining the matter of an annulment. It may be observed here that, although Maryland prohibits common law marriages within our state, the public policy of Maryland has long recognized a foreign common law marriage, provided, of course, it is valid where consummated.

While Section 1-202(a) of the Estates and Trust Article does not use the same

language regarding "validity" as does Section 1-202(b), we are bound to give effect to our statute as it is written. Since Section 1-202(a) simply uses the word "valid", it must be tested by the standards of the jurisdiction where the decree of annulment was granted, the Republic of Spain.

The Court finds and it so holds that the renunciation filed in the estate of Jean Arthur Lowenthal, by the Petitioner, is of no force and effect as the marriage between the parties had been dissolved by the Supreme Court of Spain in the year 1965.

Counsel for the Personal Representative will prepare an Order effectuating the decision of the Court with costs of Petitioner.

JUDGES

Dated: _____

APPENDIX D

IN THE MATTER OF
THE ESTATE OF
JEAN ARTHUR LOWENTHAL
Deceased

* IN THE
* ORPHANS'
* COURT
* OF
* BALTIMORE
* CITY

* * * * *

ORDER

The above entitled cause standing ready for hearing upon Petition for Hearing upon Renunciation and Answer thereto.

The Court having heard extensive testimony, and having previously filed Its Memorandum Opinion in which It found as a fact that Maria de Pilar San Jose de los Heros is not the widow of the deceased.

It is thereupon ORDERED, ADJUDGED, and DECREED this day of August, 1981, by the Orphans' Court of Baltimore City that the renunciation hereinbefore filed be, and the same is of no force and effect.

Costs of these proceedings to be paid by Petitioner.

JUDGES

APPENDIX E

IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 1981

NO. 174

PILAR LOWENTHAL,

Appellant,

v.

MORTON E. ROME, Surviving Personal
Representative Of The Estate
of Jean Arthur Lowenthal, et al.

Appellees.

MOTION FOR RECONSIDERATION
AND REQUEST FOR STAY OF MANDATE

Pilar Lowenthal, Appellant, by ALLEN,
THIEBLOT & ALEXANDER, JOHN D. ALEXANDER, JR.
and WILLIAM T. KERR, her attorneys, moves,

pursuant to Maryland Rule 850, that this Honorable Court reconsider its September 3, 1982 Opinion and Order and reverse the judgment of the Orphan's Court of Baltimore City.

The Opinion misconstrues the statutory definition of "surviving spouse", as used in Estates and Trusts §1-202 and relies on an erroneous interpretation of the word "voluntary" in §1-202(b), thereby depriving appellant, and others similarly situated, of property without due process of law.

The Court's interpretation of the word "voluntary" is totally at odds with the intent of Maryland Marriage, Divorce and Testamentary laws. The interpretation jeopardizes the marital and property rights of any person whose spouse seeks to divorce them. It effectively prevents them from promptly contesting a foreign divorce for fear their "voluntary" appearance will subsequently bar

them from taking as a "surviving spouse" under Maryland testamentary law. The interpretation forces them to give up the right to protest the unlawful dissolution of their marriage in order to retain the right to participate in testamentary distribution, a clear denial of due process of law.

Additionally, reconsideration is urged because the Court recognizes a Spanish annulment, granted on religious grounds no longer even cognizable in Spain, where such recognition violates the First Amendment of the Constitution of the United States, the Maryland Constitution, Declaration of Rights, Articles 36 and 37, and the strong public policy of this State.

Lastly, by failing to decide these issues, this Court itself has denied Appellant due process of law.

Appellant is considering filing a Petition for Writ of Certiorari to the United States Supreme Court. Accordingly, Appellant requests a stay of the Mandate of this Court until this Motion for Reconsideration has been decided.

ALLEN, THIEBLOT & ALEXANDER

By:

JOHN D. ALEXANDER

WILLIAM T. KERR
4th Floor
The World Trade Center
Baltimore, Maryland 21202
(301) 837-1140
Attorneys for Pilar Lowenthal

I HEREBY CERTIFY that on this 1st day of October, 1982, a copy of the foregoing Motion for Reconsideration and Request for Stay of Mandate and attached Order was mailed to Stephen C. Winter, Esquire, White, Mindel,

Clarke & Hill, 305 West Chesapeake Avenue,
Towson, Maryland 21204, Attorney for Morton E.
Rome, Surviving Personal Representative, and
Ronald A. Silkworth, Esquire, 425 St. Paul
Place, Baltimore, Maryland 21202, Attorney for
Rolf Lindner.

Of Counsel for Pilar Lowenthal

No. 82-1133

Office-Supreme Court, U.S.
F I L E D

IN THE

FEB 2 1983

ALEXANDER L STEVAS,
CLERK

Supreme Court of the United States

OCTOBER TERM, 1982

PILAR LOWENTHAL, JEAN ARTHUR
LOWENTHAL, JR. AND MARIA LORETO LOWENTHAL,
Appellants,

v.

MORTON E. ROME, SURVIVING
PERSONAL REPRESENTATIVE OF THE
ESTATE OF JEAN ARTHUR LOWENTHAL, AND
ROLF LINDNER,

Appellees.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STEPHEN C. WINTER,
WHITE, MINDEL, CLARKE & HILL,
305 W. Chesapeake Avenue,
Towson, Maryland 21204,
(301) 828-1050,

Attorney for Appellee,
Morton E. Rome, Surviving
Personal Representative
of the Estate of
Jean Arthur Lowenthal.

QUESTIONS PRESENTED

I.

Does not Section 1-202 of the Estates and Trust Article of the Annotated Code of Maryland bar the claim of the Appellant as a surviving spouse of the Decedent?

II.

Under the facts of this case, does Maryland's recognition of the decision of the Highest Court in Spain, that there was no valid marriage between the Appellant and the Decedent, violate any rights of the Appellant who is a citizen of Spain and has always been a resident of Spain?

III.

Is not the Appellant barred by estoppel and/or laches in attacking the annulment decree of the Highest Court of Spain and in attempting to request United States Courts not to recognize the annulment?

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1982

PILAR LOWENTHAL, JEAN ARTHUR
LOWENTHAL, JR. AND MARIA LORETO LOWENTHAL

Appellants,

v.

MORTON E. ROME, Surviving
Personal Representative of the
Estate of Jean Arthur Lowenthal, and
ROLF LINDNER,

Appellees.

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND
BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

CONCISE STATEMENT OF THE CASE

Jean Arthur Lowenthal was born in Baltimore, Maryland and was an American citizen. Mr. Lowenthal, while living in Malaga, Spain (but married to a woman in Baltimore), met Maria del Pilar San Jose De Los Heros (the "Appellant") and in 1958 and 1959, the Appellant became the mother of two children of which Jean Arthur Lowenthal was apparently the father. The Appellant has been a citizen and resident of Spain during her entire life and has never been a citizen or resident of any other country.

On August 5, 1959, the Circuit Court No. 2 of Baltimore City terminated the previous marriage of Jean Arthur Lowenthal and granted a divorce a vinculo matrimonii to his first wife. On August 25, 1959, Jean Arthur Lowenthal and the Appellant went through a marriage ceremony in the City of Gibraltar. The Appellant and the Decedent lived together in Malaga, Spain until early

in 1961 when the Appellant and her two children moved out of the residence which was owned by the Decedent and, thereafter, she occupied a separate residence in Malaga.

On March 22, 1966, Princess Anna Margaretha Bernadotte of Sweden and Jean Arthur Lowenthal were married in London, England and they lived in the residence in Spain until Anna's death in 1975.

After the separation of the Decedent and the Appellant, the Decedent instituted proceedings for annulment of his marriage with the Appellant in the trial courts of Malaga, Spain. The Appellant had notice of this annulment proceeding and was represented by Spanish lawyers of her own choice throughout the entire annulment proceedings, which included a trial court in Malaga, the appellate court in Granada and the Supreme Court in Madrid where finally, the annulment of the marriage was affirmed by the highest court of Spain, the Supreme Court of Spain,

on July 5, 1956.

The Appellant later instituted proceedings for alimony against the Decedent; based upon the annulment decision; however, a decision of the Trial Court in Malaga, Spain, affirmed by the Intermediate Court in Granada and, finally, by the Supreme Court of Spain in 1967 found that the Appellant was not entitled to support because of the annulment decision of July 5, 1965.

The Decedent died in London, England on June 19, 1977 and his estate is subject to administration before the Orphans' Court of Baltimore City. The Appellant filed a Renunciation and Election with the Orphans' Court, claiming that she was the surviving spouse of the Decedent and that under the laws of the State of Maryland, she was entitled to a share of the estate.

Pursuant to an Order of Court dated August 7, 1981, the Orphans' Court of Baltimore City found that the Renunciation

and Election filed by the Appellant on September 15, 1977 with the Orphans' Court of Baltimore City was void and of no effect because the marriage of the Appellant and the Decedent was annulled by the decision of the Supreme Court of Spain dated July 5, 1965. On September 4, 1981, the Appellant filed an Order of Appeal to the Court of Special Appeals of Maryland. On January 22, 1982, the Appellant filed a Petition for Writ of Certiorari with the Court of Appeals of Maryland. The Petition for Writ of Certiorari was granted and the Writ was issued to the Court of Special Appeals of Maryland. The Maryland Court of Appeals found that the Appellant was not the surviving spouse and that therefore her election to take against the Will of Jean Arthur Lowenthal was void and of no effect, pursuant to an Opinion and Order of the Maryland Court of Appeals dated Setpember 3, 1982. On October 2, 1982 the Appellant filed with the Maryland Court of

Appeals a Motion for Reconsideration and Request for Stay of Mandate which was denied by the Maryland Court of Appeals on October 4, 1982. On January 4, 1983 the Appellant filed with the Supreme Court of the United States a Petition for Writ of Certiorari. This Brief is filed in opposition to the Petition for Writ of Certiorari.

ARGUMENT

The Appellant respectfully suggests that it would not be in order for this Court to exercise its discretion in favor of hearing and deciding this case.

I.

THE ISSUES PRESENTED BY THE PETITION FOR WRIT OF CERTIORARI ARE NOT SUFFICIENTLY IMPORTANT TO WARRANT THIS COURT'S ATTENTION.

It is not enough for the Petitioner to observe that the legal status of her marriage to the Decedent has "not been, but should be, settled by this Court". There is no reason why it should be. The fact

that a given question has not been resolved by the Supreme Court is not a recognized basis for the grant of certiorari.

The issue in the present case is most unlikely ever to recur and is too narrow to warrant review by this Court on certiorari. It can only arise in those few cases where Spanish courts granted annulments of marriages on religious grounds prior to 1978.

The only real questions that the Appellant raises in her Petition turn on the particular facts of this case and are of interest only to the parties in this proceeding. In essence, the Petition is asking this Court to make another review of the lengthy trial record to see if it can find what other courts have been utterly unable to find - proof that the Appellant's appearance before Spanish courts was not voluntary and proof that non-recognition of the Appellant as the surviving spouse of the

Decedent violates the United States Constitution. This Court has indicated that "we do not grant a certiorari to review evidence and discuss specific facts". United States v. Johnson, 268 US 220, 227 (1925). In the present case the Petitioner raises only questions turning entirely on the facts of this case, already resolved by other courts in favor of the Appellee, and without any impact outside the limits of this case.

II.

THE DECISION OF THE MARYLAND COURT OF APPEALS GAVE CONSIDERATION TO THE ISSUES AND DECIDED THEM CORRECTLY.

The decision of the Maryland Court of Appeals turned on state law and the interpretation by the Maryland Court of Section 1-202 and Section 3-203 of the Estates and Trusts Article of the Annotated Code of Maryland. The Maryland Court of Appeals found that the Petitioner had appeared before the Spanish courts, that she was not

compelled "under any kind of penalties such as exposure to being held in contempt of court and subject to incarceration", "that it was Appellant's burden to prove what the Spanish law in this respect was and "such proof being absent", Lowenthal v. Rome, 294 Md. 277, 283, 449 A.2d. 441 (1982), the Petitioner had a choice of whether or not to appear in the Spanish courts and that she chose to appear and exercise her free will and therefore voluntarily appeared in the Spanish courts with her own attorney representing her. Accordingly, the appearance having been voluntary, and the marriage having been annulled, the Petitioner is not the surviving spouse of the Decedent and has no claim at all against the estate of the Decedent. Moreover, the case having been decided upon state law, certiorari should be denied.

III.

EVEN IF THE PROVISIONS OF MARYLAND LAW DEALING WITH "VOLUNTARY APPEARANCE" ARE NOT CONTROLLING, UNDER THE FACTS OF THIS

CASE, THERE IS NO POLICY WHICH REQUIRES THE MARYLAND COURT NOT TO RECOGNIZE THE ANNULMENT DECREE OF THE SUPREME COURT OF SPAIN.

The landmark case dealing with the recognition of foreign judgments indicates that as to judgments of courts of foreign countries, there is no constitutional requirement of recognition - it is a matter of comity. Hilton v. Guyot, 16 SC 139 (1895). With respect to the recognition of foreign judgments, this Court indicated, in Hilton p. 159 "...it should be held conclusive upon the merits tried in the foreign court, unless special ground is shown for impeaching the judgment as by showing that it was affected by fraud or prejudice, or that by principles of international law, and by the comity of our own country, it should not be given full credit and effect".

The Restatement (Second) of Conflicts of Laws, Sections 98, 117, 283 and 286 sets forth the rules to be applied by courts in

determining whether a foreign judgment should be recognized and Comment C to Section 117 indicates that with respect to public policy, "the fact that suit on the original claim could not have been maintained in a state of the United States does not mean that a judgment rendered on a claim in a foreign nation will necessarily be refused enforcement by the courts of that state", and, the reporter's note to Comment C indicates that "the modern cases indicate that courts of a state of the United States will frequently enforce a judgment rendered in a foreign nation although they would have refused to entertain suit on the original claim on grounds of public policy".

Although it is obvious that the United States Constitution does set the public policy of the states of this Country, even in cases where the enforcing state determines that there is a public policy question, there are numerous cases where the foreign judg-

ment has been recognized such as Cooley v. Weinberger, 398 F Supp. 479 (D Oklahoma) aff'd 518 F 2d. 1151 (10th 1974) where in a murder case in Iran, the Plaintiff was not afforded the same facets of due process as she would have been had she been tried for murder in the United States; Chaudry v. Chaudry, 159 NJ Super 566, 388 A.2d. 1000 (1978), where a Pakistan divorce and anti-nuptial agreement were upheld even though it violated New Jersey law; and Greschler v. Greschler, 51 NY 2d. 368, 414 NE 2d. 694, 434 NYS 2d. 194 (1980), where a Dominican Republic divorce decree was enforced by New York courts even though the appearance in the foreign court was only by power of attorney. Accordingly, the Petitioner, who is a Spanish citizen and has never ever been a resident of the United States, has not demonstrated any public policy or constitutional ground of such importance as to require this Court to hear this case.

IV.

THE APPELLANT IS BARRED BY ESTOPPEL AND/OR LACHES UNDER THE LAW OF THE STATE OF MARYLAND FROM ATTACKING THE ANNULMENT DECREE OF THE SUPREME COURT OF SPAIN.

Under Maryland law, equitable estoppel is the effect of the voluntary conduct of a party whereby he or she is absolutely precluded, both at law and in equity, from asserting rights which may have otherwise existed against another person who has in good faith relied upon such conduct, and laches involves such neglect or omission to assert a right as taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, operates as a bar to enforcement of a claim. Fitch v. Double U Sales Corp., 212 Md. 324, 338, 129 A.2d. 939 (1957), Boehm v. Boehm, 182 Md. 254, 34 A.2d. 447 (1943). Where one, knowing his rights, takes no step to enforce them until the condition of the other party has in good faith become so changed that he

cannot be restored to his former status if the right be then enforced, the delay operates as an estoppel against the assertion of the right, Bradley v. Cornwall, 203 Md. 28, 98 A.2d. 280 (1953) and Pryor v. Pryor, 240 Md. 224 (1964).

After the annulment of the marriage in 1965, the Decedent lived with his third wife in the same community as the Petitioner, and the Decedent and his third wife held themselves out as a married couple and conducted themselves as such both in Spain and abroad, both with relatives and friends. To now suggest that the annulment is invalid, or should not be recognized, will have the effect of making the Decedent a bigamist and such action would also thwart the obvious estate plans of Jean Arthur Lowenthal, plans of his relatives and the feelings and plans of the heirs of his deceased third wife. The Petitioner never made an attempt to attack the annulment of her marriage to Jean

Arthur Lowenthal either in Spain or in the United States in the entire twelve year period after the annulment of the marriage until after the death of Jean Arthur Lowenthal. To allow her to do so at this time would cause obvious injury to many concerned people.

CONCLUSION

This case involves issues of state law dealing with domestic relations and estate administration. The case was decided fairly and correctly by the Maryland Court of Appeals. It is inconceivable that there will be many other cases arising under the same set of facts. This case does not justify the issuance of the Writ of Certiorari. Accordingly, it is respectfully suggested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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Attorney for Appellee,
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of the Estate of
Jean Arthur Lowenthal

I HEREBY CERTIFY that on this 2nd day
of February, 1983, a copy of the foregoing
Brief In Opposition To Petition For Writ Of
Certiorari was mailed to John D. Alexander,
Jr., Esquire and William T. Kerr, Esquire,
Thieblot & Alexander, Fourth Floor, The World
Trade Center, Baltimore, Maryland 21202 and
Ronald A. Silkworth, Esquire, 425 St. Paul
Place, Baltimore, Maryland 21202.

Stephen C. Winter